

1 Galen H. Satterlee (State Bar No. 025220)
2 C.J. Gibbs (State Bar No. 028810)
3 Scott Reynolds (State Bar No. 013652)
4 SATTERLEE GIBBS PLLC
5 3133 W. Frye Road, Suite 101
6 Chandler, Arizona 85226
7 Telephone: 480-702-1211
8 Fax: 480-546-3218
9 E-mail: galen@sgazlaw.com
10 cj@sgazlaw.com
11 scott@sgazlaw.com
12 minuteentries@sgazlaw.com

9 Attorneys for Defendants Rural/Metro Fire Dept., Inc.,
10 Grant Reed and Brittany Reed

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Robert Steven Cutler, individually and as
14 Administrator of the Estate of David A. Cutler,
15 deceased, on behalf of himself and on behalf of
16 all beneficiaries of the Estate of David A.
Cutler, deceased, and Renee Luddington Cutler,

17 Plaintiffs,

18 vs.
19

20 Mark D. Napier, Sheriff of Pima County,
21 Arizona, in his official capacity; Rural/Metro
22 Fire Dept., Inc., an Arizona for profit
corporation, Keith Barnes and Jane Doe Barnes,
his spouse, Grand Reed and Brittany Reed,

23 Defendants.
24
25
26

No. 18-CV-00383-TUC-FRZ

**DEFENDANTS RURAL/METRO
FIRE DEPT., INC., GRANT REED
AND BRITTANY REED'S
MOTION FOR SUMMARY
JUDGMENT RE: NEGLIGENCE
CLAIM – TAYLOR EXPERT
TESTIMONY PRECLUSION**

(Oral Argument Requested)

**(Assigned to the Honorable
Frank R. Zapata)**

1 **I. INTRODUCTION**

2 Defendants, Rural/Metro First Dept., Inc., Grant and Brittany Reed (collectively
3 “RM”), pursuant to Rule 56, F.R.C.P., move to disqualify Plaintiff’s police procedures
4 expert, Roy Taylor from testifying as to any standard of care opinions as it relates to
5 Defendant (Certified Paramedic) Grant Reed. Roy Taylor is not competent under Rule
6 601, Fed.R.Evid. and does meet the criteria established by A.R.S. § 12-2604(A)(1) and
7 (2) as it relates to any paramedic standard of care opinions. Accordingly, Plaintiff cannot
8 satisfy his burden on this element of his claim required under A.R.S. § 12-563 and RM is
9 entitled to summary judgment in its favor.

10 Roy Taylor has never been certified as an EMCT-Paramedic, does not actively
11 practice as an EMCT-Paramedic, and does not teach EMCT-Paramedic students. As such,
12 this Court should disqualify Mr. Taylor as it relates to any EMCT-Paramedic standard of
13 care opinions and grant summary judgment in favor of RM.

14 **II. FACTUAL BACKGROUND**

15 **A. Plaintiff’s Police Procedures Standard of Care Expert – Taylor.**

16 Plaintiff has disclosed Roy Taylor who intends on providing some expert testimony
17 on Defendant Grant Reed’s paramedic standard of care. Roy Taylor was employed by
18 Plaintiff as a police procedures expert. DSOF ¶ 1. Although he worked as an EMT (not
19 as a certified paramedic), that employment ended in 2010, several years before the incident
20 in this case. DSOF ¶ 2. Roy Taylor is not certified as an EMCT-Paramedic, has no
21 experience as a paramedic since 2010, does not actively practice as an EMCT-Paramedic,
22 and does not instruct paramedic students. DSOF ¶ 3.

23 With respect to Roy Taylor’s experience as an EMT, he admits that his employment
24 as an EMT ended in 2010.

1 In addition, I was a certified Emergency Medical Technician from 1980
2 until 2010 and worked as a full-time fire fighter/EMT-I assigned to the
3 rescue squad from 1984 to 1986 as well as a number of part-time and
volunteer positions from 1980 to 1986.

4 DSOF ¶ 4.

5 Mr. Taylor also admits that he has never been licensed or certified as a paramedic
6 and never been qualified as an expert to testify as to a paramedic's standard of care.

7 Q. I saw that you had some medical training, but you've never been licensed
8 as a paramedic; is that right?

9 A. Correct. EMT intermediate, step below paramedic. We could start
10 IVs and intubate, but we just weren't allowed to push drugs.

11 Q. And I take it, since you've never been a
12 I take it, since you've never been a licensed paramedic, that you have never
13 been qualified as an expert with respect to the paramedic standard of care?

14 A. Correct.

15 DSOF ¶ 5. Deposition of Roy Taylor, p. 117, lns. 13-21.

16 III. LEGAL ANALYSIS

17 A. **Plaintiff's Police Procedures Expert, Roy Taylor, Does Not Meet the**
18 **Requirements Under A.R.S. § 12-2604 to Render Standard of Care**
19 **Opinions Against Defendant Grant Reed Because He Is Not Certified As**
20 **an EMCT – Paramedic, Does Not Actively Practice as an EMCT-**
21 **Paramedic and Does Not Instruct Paramedic Students.**

22 A plaintiff must establish medical malpractice by proving that "[t]he health care
23 provider failed to exercise that degree of care, skill and learning expected of a reasonable,
24 prudent health care provider in the profession or class to which he belongs within the state
25 acting in the same or similar circumstances. . . ." A.R.S. § 12-563 "In medical malpractice
26 cases, plaintiffs must show that a health care provider breached the appropriate standard
of care and the breach resulted in injury." *Baker v. University Physicians Healthcare*, 231

1 Ariz. 379, 384, ¶ 12, 296 P.3d 42 (2013). Accordingly, Plaintiff in this case must establish
2 that Defendant Reed failed to meet the standard of care.

3 “Contrary to Plaintiff’s arguments that Rule 702 controls the admission of expert
4 opinion testimony in federal courts, Rule 601 [Fed.R.Evid.] mandates that federal courts
5 apply state witness competency rules in both FTCA and diversity actions.” *Mann v.*
6 *United States*, 2012 WL 273690 (D. Ariz. 2012) *10. *McDowell v. Brown*, 392 F.3d 1283,
7 1294-97 (11th Cir. 2004)(“The analysis we engage in then, is first whether the expert is
8 qualified to render an opinion regarding the standard of care (the competency component),
9 and second, whether the expert’s causation theory meets the strictures of Rule 702”).
10 Competency requires that an expert must meet the criteria of A.R.S. § 12-2604. *See*
11 *Wright v. United States*, 2008 WL 820557 (D. Ariz. 2008)(applying A.R.S. § 12-2604 to
12 malpractice action pursuant to Rule 601 Fed.R.Evid.) Indeed, the Arizona Supreme Court
13 has determined that A.R.S. §12-2604 is substantive in nature and not procedural.
14 *Seisinger v. Siebel*, 220 Ariz. 85, 203 P.3d 483 (2009)(“We therefore conclude that insofar
15 as § 12-2604(A) specifies the kind of expert testimony to establish medical malpractice,
16 it is substantive in nature and does not offend the separation of powers doctrine.”); *See*
17 *also, Mann v. United States, supra* at *10 (“The Court agrees with the court in *Wright*,
18 which did not have the benefit in March 2008 of the Arizona Supreme Court’s discussion
19 in *Seisinger* one year later, that A.R.S. § 12-563, including A.R.S. § 12-2604(A), are
20 Arizona’s ‘plainly substantive’ laws regarding medical negligence actions.”)

21 Under Arizona law, medical malpractice experts, testifying as to the standard of
22 care must be certified or actively engaged in the same health discipline.

23 **A. In an action alleging medical malpractice, a person shall not give expert**
24 **testimony on the appropriate standard of practice or care unless the person is**
25 **licensed as a health professional in this state or another state and the person**
26 **meets the following criteria:**

1 **1. If the party against whom or on whose behalf the testimony is offered is or**
2 **claims to be a specialist, specializes at the time of the occurrence that is the**
3 **basis for the action in the same specialty or claimed specialty** as the party
4 against whom or on whose behalf the testimony is offered. If the party against
5 whom or on whose behalf the testimony is offered is or claims to be a specialist
6 who is board certified, the expert witness shall be a specialist who is board certified
7 in that specialty or claimed specialty.

8 **2. During the year immediately preceding the occurrence giving rise to the**
9 **lawsuit, devoted a majority of the person's professional time** to either or both
10 of the following:

11 (a) **The active clinical practice of the same health profession** as the defendant
12 and, if the defendant is or claims to be a specialist, in the same specialty or
13 claimed specialty.

14 (b) **The instruction of students in an accredited health professional school or**
15 **accredited residency or clinical research program in the same health**
16 **profession as the defendant** and, if the defendant is or claims to be a
17 specialist, in an accredited health professional school or accredited residency
18 or clinical research program in the same specialty or claimed specialty.

19 A.R.S. § 12-2604(A)(1)(2)(emphasis supplied)

20 Defendant Grant Reed is a certified EMCT – Paramedic. DSOF ¶ 6. Such
21 certification is provided by the Arizona Department of Health Services, Bureau of
22 Emergency Medical Services & Trauma Services pursuant to Arizona Administrative
23 Code R9-25-101 *et. seq.* Thus, pursuant to A.R.S. § 12-2604(A)(2), any expert testifying
24 against Defendant Grant Reed must actively practice as a paramedic¹, or someone who
25 spends the “majority of time” instructing paramedics. It is undisputed that Roy Taylor
26 does not meet either of these requirements. He is neither a paramedic (and admits to
having no training as a paramedic) nor does he teach paramedic students. In addition to

¹ Although Roy Taylor was an EMT (and not a certified paramedic), that employment ended in 2010. The statute requires that Mr. Taylor must have been actively engaged in the paramedic practice for at least one year prior to the incident. The incident in this case occurred on June 5, 2017.

1 all of this, paramedic Reed is certified. Under A.R.S. § 12-2604(A)(1), because paramedic
2 Reed is certified by the Arizona Department of Health Services as a certified EMCT-
3 Paramedic, any standard of care expert testifying against him must likewise be a certified
4 paramedic. Roy Taylor admits that is not certified as a paramedic.

5 In *St. George v. Plimpton*, 241 Ariz. 163, 384 P.3d 1243 App. 2016), the Arizona
6 Court of Appeals disqualified an expert on very similar grounds to the case at bar. *St.*
7 *George* brought a medical malpractice claim based on obstetrical and nurse-midwifery
8 services. *St. George* claimed that the certified nurse in that case injured plaintiff by
9 negligently apply pubic pressure during the delivery of her baby. *St. George* also brought
10 other claims against the supervising doctor and hospital.

11 *St. George* disclosed Dr. Watters, a board-certified obstetrician/gynecologist, who
12 would testify that the Nurse fell below the standard of care. The Nurse moved for
13 summary judgment, arguing that since Dr. Watters was not a Nurse or certified as a Nurse
14 (and never taught student nurses), he was not qualified under A.R.S. § 12-2604(A)(1) or
15 (2) to render expert opinions against the Nurse. The trial court granted the Nurse's motion
16 agreeing that the board-certified obstetrician/gynecologist could not testify against the
17 Nurse under 12-2604. On appeal, the Court of Appeals affirmed the ruling of the trial
18 court.

19 Nurse Franklin is a licensed registered nurse and a certified nurse midwife.
20 Thus, pursuant to A.R.S. § 12-2604(A)(2), any expert testifying against her
21 must be a nurse, or someone who spends the "majority" of his time instructing
22 nurses. *Cornerstone*, 231 Ariz. at 79, ¶ 41, 290 P.3d 460 (stating that where
23 the defendant health care provider in a case involving allegations of medical
24 negligence is a registered nurse, nursing is the health profession for purposes
25 of A.R.S. § 12-2604(A)(2)); *Rasor v. Northwest Hosp., LLC*, 239 Ariz. 546,
26 567, ¶ 11, 373 P.3d 563 (App. 2016) (holding that nursing qualifies as a
"health profession" for the purposes of A.R.S. § 12-2604(A)(2)). Moreover,
under § A.R.S. § 12-2604(A)(1), because Nurse Franklin is certified by the
ASBN as a certified nurse midwife, any standard of care expert testifying
against her must likewise be a certified nurse midwife.

1 241 Ariz. at 167-68; 384 P.3d at 1247-48.

2 Similar to this case, Defendant Grant Reed is a certified EMCT-Paramedic.
3 Consequently, under 12-2604(A)(2), Plaintiff's expert on a paramedic's standard of care
4 must either be, for the year prior to the incident, actively practicing as a paramedic or for
5 a majority of time teaching paramedic students. Just as in the *St. George* case, neither
6 requirement can be met. As an alternative basis, under 12-2604(A)(1), Roy Taylor is not
7 certified as an EMCT-Paramedic and fails under this requirement as well.

8 Because Mr. Taylor's testimony on the standard of care and breach thereof is not
9 admissible, Plaintiff has no witness to establish RM breached the standard of care.
10 Accordingly, no reasonable jury could find in Plaintiff's favor on the medical malpractice
11 claim. RM is entitled to summary judgment in its favor on that claim.

12 **IV. CONCLUSION**

13 A.R.S. § 12-2604(A)(1) and (2) place certain requirements on testifying experts.
14 Although Roy Taylor claims he will testify as to the standard of care concerning certified
15 paramedic Grant Reed, Mr. Taylor fails every requirement necessary under the governing
16 statute. Because Mr. Taylor cannot offer standard of care opinions due to the fact that he
17 is not qualified, Plaintiff cannot establish the requisite standard of care necessary for a
18 claim of medical negligence under A.R.S. § 12-563.

19 Defendant Grant Reed (and RM) respectfully request that the Court issue an Order
20 granting summary judgment in their favor.

21 ///

22 ///

23 ///

1 RESPECTFULLY SUBMITTED this 3rd day of September, 2020.

2
3 SATTERLEE GIBBS PLLC

4
5 By: /s/ Scott Reynolds
6 Galen H. Satterlee
7 C.J. Gibbs
8 Scott Reynolds
9 3133 W. Frye Road, Suite 101
10 Chandler, Arizona 85226
11 Attorneys for Defendants Rural/Metro Fire
12 Dept., Inc., Grant Reed and Brittany Reed
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2020, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Scott H. Zwillinger
WITTHOFT DERKSEN, P.C.
3550 North Central Avenue, Suite 1006
Phoenix, Arizona 85012
- Shaun T. Kuter
Paul J. Vaporean
Goldman & Zwillinger PLLC
17851 N. 85th Street, Suite 175
Scottsdale, Arizona 85255
Attorneys for Plaintiff
- Daryl Audilett
Audilett Law PC
335 North Wilmot Road, Suite 500
Tucson, Arizona 85711-2636
Attorney for Defendants Sheriff Napier and Keith Barnes

By: /s/ Kirsten Sylvia